



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 987**

**[Doc. No. AMS-FV-10-0025; FV10-987-1 FR]**

**Domestic Dates Produced or Packed in Riverside County,  
California; Order Amending Marketing Order 987**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Agreement and Order No. 987 (order), which regulates the handling of domestic dates produced or packed in Riverside County, California. The amendments approved by producers in referendum were proposed by the California Date Administrative Committee (CDAC or committee), which is responsible for local administration of the order. The amendments are intended to improve administration of and compliance with the order and reflect current industry practices. Two amendments proposed by the Agricultural Marketing Service (AMS) were not approved in referendum.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Martin Engeler, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5110, Fax: (559) 487-5906,

or Kathleen M. Finn, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Martin.Engeler@ams.usda.gov or Kathy.Finn@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." The applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) made changes to section 18c(17) of the Act, which in turn required the

addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August, 21, 2008). The additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend federal fruit, vegetable, and nut marketing agreements and orders if certain criteria are met.

AMS has considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and has determined that amending the order as proposed by the committee could appropriately be accomplished through informal rulemaking.

The committee's proposed amendments were recommended following deliberations at public meetings on October 30, 2008; October 29, 2009; and February 25, 2010. The proposed amendments were first submitted to AMS on May 29, 2009. After further discussions with AMS, the committee submitted revised proposals to AMS on March 2, 2010.

A proposed rule soliciting comments on the proposed amendments was issued on June 6, 2011, and published in the **Federal Register** on June 14, 2011 (76 FR 34618). No comments were received. A proposed rule and referendum order was issued on November 3, 2011, and published in the

**Federal Register** on November 9, 2011 (76 FR 69678). This document directed that a referendum among date producers be conducted during the period January 16, 2012 through February 3, 2012, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of dates represented by voters in the referendum. The amendments recommended by the committee were favored by more than 92 percent of those voting in the referendum and by more than 99 percent of the volume represented in the referendum.

The amendments included in this final rule will: (1) Authorize the committee to recommend regulatory exemptions for certain date varieties if market conditions warrant such exemption; (2) Increase the terms of office for committee members and alternates from two to three years; (3) Authorize the committee to conduct business by means of telephone or video conference technologies; (4) Authorize the committee to collect interest charges and late fees on delinquent assessment payments; and (5) Authorize the committee to build and maintain an operating monetary reserve not to exceed one year's average expenses.

An amended marketing agreement was subsequently provided to all date handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of dates handled by all handlers covered under the order.

Two amendments concerning periodic continuance referenda and committee member term limits recommend by AMS were not approved by producers in referendum.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 79 producers of dates in the production area and 8 handlers subject to regulation under

the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts of less than \$7,000,000.

According to the National Agricultural Statistics Service (NASS), the 2010 crop yield was approximately 7,080 pounds, or 3.54 tons, of dates per acre. NASS estimates that the 2010 grower price was approximately \$0.585 per pound, or \$1,170 per ton. Thus, the value of date production in 2010 averaged about \$4,142 per acre (7,080 pounds per acre times \$0.585 per pound). At that average price, a producer would have to farm over 181 acres to receive an annual income from dates of \$750,000 (\$750,000 divided by \$4,142 per acre equals 181.1 acres). According to committee staff, the majority of California date producers farm fewer than 181 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the committee, the majority of handlers of California dates may also be considered small entities.

The amendments will authorize the committee to recommend regulatory exemptions for dates by variety,

provide for three years terms of office for committee members, provide for committee meetings by telephone and other means of communication, authorize an operating monetary reserve not to exceed one year's average expenses, and authorize the collection of interest and late payment charges on delinquent assessment payments.

Conforming changes to the order's administrative rules and regulations will be made to facilitate implementation of the amendments approved by voters in the referendum. Specifically, the committee's nomination and polling procedures will be modified to require that balloting materials be provided to producers by June 15 of every third year.

The amendments were unanimously recommended at public meetings held on October 30, 2008; October 29, 2009; and February 25, 2010. The committee believes that each of their amendments will benefit producers and handlers of all sizes.

The amendment granting authority to temporarily exempt certain date varieties from regulation will allow the committee to determine whether the costs of collecting assessments and reports on individual varieties are warranted. Handler burden related to those functions will



be reduced for exempted varieties. Decreases in handler assessment obligation and reporting costs could be passed on to producers. Administrative costs related to enforcing regulatory compliance for those varieties will also be reduced.

Producer and handler participation in committee nominations is expected to improve when member terms of office are extended from two to three years. Extending the terms of office will afford the committee more time to identify and develop potential new members between committee selections. Coordinating committee nomination periods with those of other industry programs is expected to reduce voter confusion and increase the number of ballots returned, thus improving producer and handler representation on the committee.

Adding authority for alternative meeting formats is expected to improve participation in committee deliberations by industry members of all sizes. Using alternative meeting formats will minimize the time that committee members are required to be away from their individual businesses. Authorizing the chairperson to determine the format for each meeting will ensure that critical committee business is addressed appropriately. By

providing greater flexibility for meeting attendance and participation, the committee hopes to benefit from the input of a greater number of interested persons whose perspectives and ideas could improve the marketing of California dates, which would in turn benefit both producers and handlers.

Authorizing the committee to impose interest and late payment charges on delinquent assessments is intended to encourage handlers to make payments on a timely basis. There will be no additional cost to handlers who comply with the order's assessment requirements. Timely assessment payments allow the committee to make and keep financial obligations with regard to operation of its programs, including marketing and promotion, which are intended to benefit all producers and handlers.

Adding authority to build and maintain an operating reserve equal to one year's average expenses is intended to allow the committee to recommend increases to their assessment rate in order to gradually build the reserve. During high production years, excess assessments could be added to the reserve until the fund's limit is reached. The larger operating reserve will help ensure that the committee has sufficient funds to meet its financial

obligations and maintain critical marketing programs, even during short crop years. Such stability is expected to allow the committee to conduct programs that will benefit all entities, regardless of size.

The changes to the order's nomination and polling regulations are intended to facilitate implementation of the proposed amendments.

Where measurable, the costs outlined in this analysis are expected to be proportional to the size of business, so smaller businesses should not be unduly burdened. Benefits associated with improved efficiencies and greater representation on the committee should accrue to all entities, regardless of size.

Alternatives to these proposals included making no changes at this time. However, the changes are necessary to update administration of the order to reflect current industry practices, provide consistent funding that will enable the committee to maintain valuable marketing programs, and provide greater opportunity for committee participation.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of

Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The committee's meetings, at which these proposals were discussed, were widely publicized throughout the date industry. All interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the meetings were public, and all entities, both large and

small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the **Federal Register** on June 14, 2011 (76 FR 34618). Copies of the rule were mailed or sent via facsimile to all committee members and date handlers. Finally, the rule was made available through the internet by USDA and the Office of the **Federal Register**. A 30-day comment period ending July 14, 2011, was provided to allow interested persons to respond to the proposal. No comments were received in response to the proposed order amendments. Further, no comments were received in response to the proposed conforming changes to the administrative regulations.

A proposed rule and referendum order was then issued on November 3, 2011, and published in the **Federal Register** on November 9, 2011 (76 FR 69678). This document directed that a referendum among date producers be conducted during the period January 16, 2012, through February 3, 2012, to determine whether they favor the proposed amendments to the order. To become effective, the amendments had to be approved by at least two-thirds of the producers voting, or two-thirds of the volume of dates represented by voters in the referendum. All of the proposed amendments were

favorable by more than 92 percent of those voting in the referendum and by more than 99 percent of the volume represented in the referendum.

An amended marketing agreement was subsequently provided to all date handlers in the production area for their approval. The marketing agreement was approved by handlers representing more than 50 percent of the volume of dates handled by all handlers covered under the order.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

**Order Amending the Order Regulating the Handling of Dates  
Produced or Packed in Riverside County, California**

**Findings and Determinations**

- (a) Findings and Determinations Upon the Basis of the Rulemaking Record.

The findings hereinafter set forth are supplementary to the findings and determinations which were previously

made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing agreement and order, as amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The marketing agreement and order, as amended, regulate the handling of dates produced or packed in the production area (Riverside County, California) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order;

3. The marketing agreement and order, as amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing agreement and order, as amended,

prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of dates produced or packed in the production area; and

5. All handling of dates produced or packed in the production area as defined in the marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) Determinations. It is hereby determined that:

1. The "Marketing Agreement Regulating the Handling of Dates Produced or Packed in Riverside County, California," has been signed by handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping dates covered under the order) who during the period October 1, 2010, through September 30, 2011, handled not less than 50 percent of the volume of such dates covered under the order; and

2. The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of October 1, 2010, through September 30, 2011, have



been engaged within the production area in the production of such dates, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

#### **Order Relative to Handling**

It is therefore ordered, That on and after the effective date hereof, all handling of dates grown or packed in Riverside County, California, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of Proposals Number 1 through 5 of the proposed marketing order amending the order contained in the proposed rule issued by the Administrator on November 5, 2011, and published in the **Federal Register** (76 FR 69678) on November 9, 2011, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

#### **List of Subjects in 7 CFR Part 987**

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended as follows:

**PART 987 - DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE  
COUNTY, CALIFORNIA**

1. The authority citation for 7 CFR part 987 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

2. Revise § 987.23 to read as follows:

**§ 987.23 Term of office.**

The term of office for members and alternate members shall be three years beginning August 1, except that such term may be shorter if the Committee composition is changed in the interim pursuant to § 987.21. Provided, That the terms of office of all members and alternates currently serving at the time of the amendment will end on July 31, 2014. Each member and alternate member shall, unless otherwise ordered by the Secretary, continue to serve until his or her successor has been selected and has qualified.

3. Revise paragraph (a) of § 987.24 to read as follows:

**§ 987.24 Nomination and selection.**

(a) Nomination for members and alternate members of the Committee shall be made not later than June 15 of every third year.

\* \* \* \* \*

4. Amend § 987.31 by revising paragraphs (d) and (e) to read as follows:

**§ 987.31 Procedure.**

\* \* \* \* \*

(d) At the discretion of the chairperson, Committee meetings may be assembled or conducted by means of teleconference, video conference, or other means of communication that may be developed. Assembled meetings may also allow for participation by means of teleconference or video conference or other communication methods, at the discretion of the chair. Members participating in meetings via any of these alternative means retain the same voting privileges that they would otherwise have.

(e) The Committee may vote upon any proposition by mail, or by telephone when confirmed in writing within two weeks, upon due notice and full and identical explanation to all members, including alternates acting as members, but any such action shall not be considered valid unless unanimously approved.

\* \* \* \* \*

5. Amend § 987.52 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

**§ 987.52 Exemption.**

\* \* \* \* \*

(b) The Committee may, with the approval of the Secretary, recommend that the handling of any date variety be exempted from regulations established pursuant to §§ 987.39 through 987.51 and §§ 987.61 through 987.72.

6. Amend § 987.72 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively; by adding a new paragraph (b); and by revising redesignated paragraph (d) to read as follows:

**§ 987.72 Assessments.**

\* \* \* \* \*

(b) Delinquent payments. Any assessment not paid by a handler within a period of time prescribed by the Committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the Committee and approved by the Secretary.

\* \* \* \* \*

(d) Operating reserve. The Committee, with the approval of the Secretary, may establish and maintain during one or more crop years an operating monetary reserve

in an amount not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds in reserve shall be available for use by the Committee for expenses authorized pursuant to § 987.71.

\* \* \* \* \*

7. Revise § 987.124(a) to read as follows:

**§ 987.124 Nomination and polling.**

(a) Date producers and producer-handlers shall be provided an opportunity to nominate and vote for individuals to serve on the Committee. For this purpose, the Committee shall, no later than June 15 of every third year, provide date producers and producer-handlers nomination and balloting material by mail or equivalent electronic means, upon which producers and producer-handlers may nominate candidates and cast their votes for members and alternate members of the Committee in accordance with the requirements in paragraphs (b)(1) and (b)(2) of this section, respectively. All ballots are subject to verification. Balloting material should be provided to voters at least two weeks before the due date and should contain, at least, the following information:

(1) The names of incumbents who are willing and eligible to continue to serve on the Committee;

(2) The names of other persons willing and eligible to serve;

(3) Instructions on how voters may add write-in candidates;

(4) The date on which the ballot is due to the Committee or its agent; and

(5) How and where to return ballots.

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Dated: June 20, 2012

Ruihong Guo  
Acting Administrator  
Agricultural Marketing Service

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